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Golan v. Ashcroft Case Page**Summary**

The CIS filed this suit on behalf of a University of Denver, Colorado conductor and others, seeking to have the CTEA and the Uruguay Round Agreements Act declared unconstitutional. The suit challenges Congress's ability to reclassify works that have already passed into the public domain as copyrighted, thereby giving ownership back to private entities.

Updates**Disappointing ruling**

Last week, the District Court [ruled](#) on the parties' pending cross motions for summary judgment. The Court denied Plaintiff's motion for partial summary judgment, and granted the government's summary judgment motion on all claims. This means the case is over at the trial court level. Although Plaintiffs had collected and produced much evidence of the harms associated with the enactment of the URAA, the Court was unpersuaded that the factual issues should preclude summary judgment or enter its analysis of the parties' claims. We expect to appeal the order to the Tenth Circuit Court of Appeals.

posted on [Apr 27 05 at 3:56 PM] by [Colette]

Joint pretrial order & pretrial conference

At the end of March, the parties jointly filed a [Pretrial Order](#) in preparation for trial in June. A pretrial conference was held before Magistrate Judge Boland on April 11. Our new lead trial attorney, [Ted Herhold](#) of the law firm Townsend & Townsend, appeared on behalf of Plaintiffs.

posted on [Apr 27 05 at 3:42 PM] by [Colette]

Plaintiff's summary judgment motion

In February, Plaintiffs filed a [summary judgment motion](#) on the Copyright Clause claim. The motion has been fully briefed. Here is the Government's [opposition](#), and Plaintiff's [reply](#)briefs.

posted on [Apr 27 05 at 3:24 PM] by [Colette]

Government's reply brief on summary judgment

The Government's [reply brief](#) in support of summary judgment was filed on Nov. 24,



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2004. No hearing date is presently scheduled for this motion.

posted on [Dec 6 04 at 9:30 AM] by [Colette]

Chief Judge Babcock affirms rulings by Magistrate Judge Boland

Chief Judge Babcock today affirmed Magistrate Judge Boland's ruling in August in which he granted in part Plaintiff's 56(f) motion and denied the government's motion for a protective order to stay discovery. The [order](#) is short and to the point.

This brings to close a rather lengthy series of motions from the summer months. Currently, we are awaiting the government's reply on its summary judgment motion, and we are working to complete discovery.

posted on [Nov 15 04 at 4:17 PM] by [Colette]

Opposition to summary judgment motion filed

We filed a brief and several declarations in opposition to the government's motion for summary judgment on November 4.

We had a great team of lawyers, law students and experts who helped put the Plaintiffs' opposition brief and supporting declarations together. Thanks to all for their great work.

Here is [the brief](#), [exhibit A](#) and [exhibits B-E](#).

posted on [Nov 6 04 at 2:36 PM] by [Colette]

Government files answer

The government filed its [Answer to the Second Amended Complaint](#) on October 12.

posted on [Oct 14 04 at 4:57 PM] by [Colette]

Litigation via the web

The October 2004 issue of Law Office Computing magazine published [this article](#) about the [Golan v. Ashcroft website](#). We are using this website to collect information and obtain more stories from the public to support the case. Go to the link and tell us your story!

posted on [Oct 13 04 at 5:46 PM] by [Colette]

Opposition Filed

The government wasn't happy about Judge Boland's decision allowing discovery and permitting Plaintiffs to develop evidence to contradict summary judgment. In fact, as noted before, it appealed Judge Boland's ruling to Chief Judge Babcock. Today, we filed Plaintiff's [brief opposing](#) the government's objection. We argue that Judge Boland's decision is consistent with precedent, and reflects the sound discretion of district courts in determining discovery issues. The Order should not be disturbed absent "clear error." As Judge Kane (also D. Colo.) has succinctly put it: a magistrate's ruling should stand unless it "strike[s]

me as wrong with the force of a five-week-old, unrefrigerated dead fish." We hope Judge Babcock agrees that there is no "dead fish" here.

posted on [Sep 16 04 at 12:10 PM] by [Colette]

Another win...

Chief Judge Babcock issued an [Order](#) on Friday granting Plaintiffs' motion to amend the complaint. The [Second Amended Complaint](#) has been accepted for filing.

posted on [Sep 7 04 at 9:54 AM] by [Colette]

Government Objects To Judge Boland's Opinion

The government has filed an [objection](#) to the decision of Magistrate Judge Boland ordering discovery to go forward in the case. We will oppose the government's objection.

posted on [Sep 7 04 at 9:49 AM] by [Colette]

Reply on Motion to Amend

We filed our [reply brief](#) on the Motion to Amend last Friday.

posted on [Aug 25 04 at 9:25 PM] by [Colette]

Win, Win

At yesterday's hour-long hearing on Plaintiffs Rule 56(f) motion for discovery and the government's motion for a protective order to stay discovery, the Court agreed with Plaintiffs' position on both motions.

Motion for Discovery

Judge Boland [ruled](#) that facts precluding summary judgment could not be presented by Plaintiffs without discovery, and that additional time would permit Plaintiffs to develop those facts. The Court ordered discovery to proceed on all issues in the case.

This ruling is a victory for Plaintiffs as we will now have the opportunity to develop the factual information challenging the government's allegation that a 200-year "tradition" or "practice" exists in this country of "restoring" copyright in works that had entered the public domain. We believe the evidence will convincingly contradict the government's argument and the Court will in turn deny the government's summary judgment motion. Moreover, factual evidence supporting Plaintiffs' first amendment and due process clause claims is also subject to full discovery. We believe evidence showing the substantial and unnecessary burdens on speech and the unconstitutional retroactive effect of the URAA will convince the Court to reject the government's motion.

Importantly, Judge Boland's ruling acknowledges two things. First, it acknowledges that events in history are, indeed, *facts* that can be controverted and, if controverted, may (and, we believe, will) preclude summary judgment. The government's attempt to cast this analysis merely as an analysis of legislative history (e.g., the congressional record) was rejected. Second, the ruling acknowledges that, on summary judgment, the Court must

consider facts that undercut the purported historical "tradition" that the government presents.

While the Court set no limits on the scope of discovery going forward, it did order that Plaintiff's oppose the summary judgment motion within 75 days (in other words, by November 1, 2004). Our work is certainly cut out for the next few months!

Motion for Stay of Discovery

Given the Court's decision on the 56(f) Motion, it is not surprising that Judge Boland also agreed with Plaintiffs' argument for denying the government's motion for a protective order to stay all discovery. Noting that this case is already an "old case" (it was filed in 2001 but stayed during the *Eldred* appeal to the Supreme Court) and that a trial is set for June 2005, Judge Boland wisely chose not to risk delaying the trial by staying all discovery. Here, the Court found that there is no "extraordinary" need for the broad relief sought by the government. Judge Boland further ordered that the government respond to the outstanding interrogatories and document requests within 30 days (i.e. by September 16, 2004). Despite the government's numerous attempts to stonewall discovery, it has now been ordered to proceed.

Lastly, and certainly not least, acknowledgements are due for the great work of everyone on our legal team in obtaining this victory. We could not have reached this result without the dedication and teamwork of [Ed Lee](#) of Ohio State's Moritz College of Law who has been involved in this case since its inception, [Hugh Gottschalk and Caroly Fairless of Wheeler Trigg & Kennedy](#) (our fantastic local counsel), [Joe Gratz](#), our CIS summer intern, and [Elizabeth Rader](#), our non-resident CIS fellow, who actively managed this case prior to my recent arrival to CIS and whose continued involvement is greatly appreciated. Thanks all for your counsel, research, and articulate advice.

posted on [Aug 18 04 at 3:12 PM] by [Colette]

Motions, motions and more motions...

We have three pending motions before the Court at this time.

First up, is Plaintiffs' Rule 56(f) Motion for discovery (see July 26 entry for links). Today, we filed our [reply brief](#) so this one is all quered up for the hearing on August 17 before Magistrate Judge Boyd N. Boland.

Second, we have received the government's [Motion for Protective Order Staying Discovery](#) which was filed on Friday, August 6. The Court ordered an expedited briefing and hearing schedule so that this motion will also be heard on August 17 by Judge Boland. It makes sense to hear these motions together, as they both relate to what discovery Plaintiffs will be entitled to and whether the Government's stonewalling tactics will be permitted to proceed. We will file our opposition brief on Monday, August 16.

Finally, we have a pending Motion to Amend the complaint (see Aug. 3rd entry for links), to which the Government's [opposition](#) was recieved today. A hearing date has not been set for this motion.

posted on [Aug 10 04 at 4:39 PM] by [Colette]

Govt's opposition received

We received the Government's [opposition brief](#) to our Rule 56(f) motion today.

posted on [Aug 3 04 at 3:04 PM] by [Colette]

Plaintiffs Move For Leave To Amend Complaint

On July 20, we filed a [Motion to Amend](#) the complaint to add the Register of Copyrights as a defendant, clarify relief sought, and conform the complaint to the Court's [March 2004 order](#) dismissing the CTEA claim (based on Eldred). The Government's opposition, if any, is due on August 10. A copy of the Second Amended Complaint which we have asked for leave to file is [here](#).

posted on [Aug 3 04 at 3:02 PM] by [Colette]

Plaintiffs Move for Discovery

In response to the Government's summary judgment motion, we filed a [Rule 56\(f\) motion](#) and [affidavit](#) seeking discovery. As our motion states, the Government's summary judgment motion is premature. The Court has already set a discovery schedule, we have served discovery which is due in August, and discovery is necessary for the Court to properly decide any summary judgment motion. A hearing is [set for August 17](#) in Denver, Colorado, before the Hon. Boyd N. Boland.

posted on [Jul 26 04 at 5:33 PM] by [Colette]

Government Moves For Summary Judgment

Today the Government filed a [Motion](#) for Summary Judgment. (sorry about formatting glitches in the PDF- this is how the Govt. sent it to us in a courtesy e-mail). The Government argues that the Court can decide the case as a matter of law, without the need to hear any testimony or decide any issues of fact. The motion urges the District of Colorado Court to follow the June 10th decision of the Federal District Court for the District of Columbia in [Luck's Music Library v. Ashcroft](#)">

posted on [Jun 23 04 at 11:22 AM] by [Elizabeth]

Tell Us Your Story or Just Learn More

Thanks to the excellent work of lawyers at [Wheeler, Trigg & Kennedy](#), we've now convinced the court of the importance of discovery to demonstrate the actual harms caused by "restored" copyrights. The task before us now is to gather and develop facts about how people used the works affected by copyright restoration before Congress passed the URAA and how they are harmed by the inability to use these works now. To help us collect these stories, we've launched a wiki-style tool. Check out this [new site](#) built by [Aaron Swartz](#) and please share your story and spread the word to others so they can share theirs.

posted on [May 21 04 at 3:51 PM] by [Elizabeth]

Case Management Conference Set

We've received an [Order](#) from the District Court setting a case management conference for May 19, 2004.

posted on [Apr 14 04 at 4:55 PM] by [Elizabeth]

Government Answers Amended Complaint

On April 1, 2004, Defendant John Ashcroft, in his official capacity as Attorney General, responded to the Plaintiffs' First Amended Complaint in *Golan v. Ashcroft*. As you recall, the Court denied the AG's motion to dismiss as to three counts, granting it as to one. Here is the [Answer](#).

In an Answer, the defendant merely admits or denies the allegations in the Complaint, paragraph by paragraph, so this isn't very interesting reading unless you have the Amended Complaint in front of you. The government denies having information about all the harms plaintiffs have alleged, and denies that the statute challenged violates the Constitution. Now the case moves into the discovery phase.

posted on [Apr 5 04 at 12:26 PM] by [Elizabeth]

Press Release

[Download file](#)

posted on [Mar 16 04 at 1:47 PM] by [jennifer]

Case Survives Motion to Dismiss!

CIS represents the plaintiffs, including a music conductor in [Golan v. Ashcroft](#), a case challenging Congress's "restoration" of copyrights to works that have passed into the public domain. The government moved to dismiss [Golan](#) on the basis of the Supreme Court's ruling in [Eldred v. Ashcroft](#). Today the District Court ([opinion](#)) rejected the government's motion, and, while striking an Eldred-related claim, refused to dismiss the other 3 counts of the complaint.

posted on [Mar 16 04 at 8:34 AM] by [jennifer]

Amended Complaint

Back by popular demand, here is the [First Amended Complaint](#) that is the subject of the pending Motion to Dismiss.

posted on [Mar 12 04 at 3:15 PM] by [Elizabeth]

No News is No News

This case is waiting for the Judge to rule on the Government's Motion to Dismiss the First Amended Complaint. The motion was fully briefed as of mid-June, 2003 so apparently the

Court is taking its time to read, understand and evaluate both side's arguments. When we get a ruling, we will update the site.

posted on [Jan 20 04 at 4:48 PM] by [Elizabeth]

Government Files Reply In Support of Its Motion To Dismiss

The Government has replied to Golan's opposition to its Motion To Dismiss the First Amended Complaint.

Download file *This motion is now full briefed and ready to be decided unless the Court wants to hear oral argument.*

posted on [Jun 13 03 at 11:24 AM] by [Elizabeth]

Plaintiffs' Opposition To Motion To Dismiss

On May 20, 2003, CIS filed its brief opposing the government's Renewed Motion to Dismiss.

Download file

posted on [Jun 4 03 at 1:41 PM] by [Elizabeth]

Government Moves To Dismiss Amended Complaint

Today, April 30, 2003, Attorney General Ashcroft moved to dismiss Plaintiffs' First Amended Complaint.

Download file

In addition to arguments made previously in a motion to dismiss the original Complaint, the Government relies heavily on the Supreme Court decision in Eldred v. Ashcroft, arguing that the Supreme Court has confirmed that the Congress has extraordinary power to choose how to accomodate the objectives of the copyright clause. Plaintiffs contend that Eldred does not foreclose their new argument that the CTEA term is effectively perpetual. Eldred also says nothing that would support Congress's decision, in the URAA, to restore copyrights on works that were already in the public domain.

posted on [Apr 30 03 at 4:13 PM] by [Elizabeth]

Motion Granted

The District Court has granted plaintiffs' Motion to File First Amended Complaint in Golan v. Ashcroft. The Amended Complaint pleads a new theory for the Copyright Term Extension Act being unconstitutional- that the new term is effectively perpetual and therefore violates "limited times." The Amended Complaint also still challenges the restoration of copyrights to numerous foreign works that had been in the public domain prior to the enactment of the Uruguay Round Agreements Act.

The Government has stated its intention to respond by filing a new Motion to Dismiss.

posted on [Apr 17 03 at 3:21 PM] by [Elizabeth]

CIS Moves To File Amended Complaint

This case had been on "administrative retirement" pending the Supreme Court's decision in Eldred v. Ashcroft. Eldred was decided in January and in February, CIS filed a Motion To File First Amended Complaint.

The proposed First Amended Complaint replaces the arguments why the Copyright Term Extension Act is unconstitutional with a new argument based on Justice Breyer's dissent in Eldred, that the new term is effectively perpetual.

posted on [Apr 15 03 at 11:07 AM] by [Elizabeth]

Openlaw, Robert Crown Library Resources

Also see the [Stanford Law School - Robert Crown Law Library Litigation Documents](#) page and [Openlaw: Golan v. Ashcroft](#) for more information on the case.

posted on [Jan 1 03 at 12:14 AM] by [kathryn]

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